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6
7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF ARIZONA

9
10 In re:

11 ERIN A WILLETT,

12 Debtor.

13 CHAPTER 13 PROCEEDINGS

14 Case No. 4:19-bk-15365-BMW

15 **TRUSTEE'S PLAN
16 OBJECTION/EVALUATION WITH
17 NOTICE OF POTENTIAL DISMISSAL
18 IF CONDITIONS ARE NOT
19 SATISFIED**

20 **RE: 3rd AMENDED PLAN (DKT #39)**

21
22 DIANNE CRANDELL KERNS, Trustee, has analyzed the above-referenced plan and
23 supporting documents on February 2, 2021 and submits the following evaluation and
24 recommendations:

25 **General Requirements:**

- 26
27 a. Due to the possibility of errors on the claims docket, it is the Attorney's responsibility to
28 review all proofs of claim filed with the Court and resolve any discrepancies between the
29 claims and the Plan prior to submitting any proposed Stipulated Order Confirming Plan to
30 Trustee. Trustee will not recommend confirmation, nor stipulate to confirmation, until the
31 proof of claims issues are resolved to Trustee's satisfaction.

- 1 b. Requests by Trustee for documents and information are not superseded by the filing of an
2 amended or modified plan. LRBp Rule 2084-10(b).
- 3 c. Trustee objects to any reduction in the Plan duration or payout in a proposed Stipulated
4 Order Confirming Plan unless an amended or modified plan is filed (using Local Form
5 2084-4, Chapter 13 Plan) and noticed out.
- 6 d. Trustee requires that any proposed Order Confirming Plan state: "The Plan and this Order
7 shall not constitute an informal proof of claim for any creditor."
- 8 e. Trustee requires that any Stipulated Order Confirming Plan state: "Debtor is instructed to
9 remit all payments on or before the stated due date each month. Debtor is advised that when
10 payments are remitted late, additional interest may accrue on secured debts, which may
11 result in a funding shortfall at the end of the Plan term. Any funding shortfall must be cured
12 before a discharge can be entered. This requirement is effective regardless of plan payment
13 suspensions, waivers or moratoriums, and must be included in any Stipulated Order
14 Confirming."
- 15 f. At the time of confirmation, Debtor is required to certify, via language in the Stipulated
16 Order confirming, that they are current on all payments that have come due on any Domestic
17 Support Orders since the filing of their case and that they are current on all required tax
18 return filings [pursuant to 11 U.S.C. Sec 1325(a)(8), (9)].
- 19 g. Debtor or Debtor's Attorney is required to provide copies of their federal and state income
20 tax returns for each year for the duration of the Plan to Trustee. Tax returns must be
21 forwarded **within 14 days after the returns have been filed**. All Personally Identifiable
22 Information must be redacted prior to submission. Tax returns may be submitted to
23 mail@dcktrustee.com. This requirement is to be included in the Stipulated Order
24 Confirming the plan. Failure to submit tax returns may result in the dismissal of the Chapter
25 13 case.
- 26 h. If Debtors received a tax refund larger than \$1,000.00 for the tax period preceding the filing
27 of this case, the continuation of such deduction would constitute a diversion of income that
28 would otherwise be available to creditors. Accordingly Trustee requires that Debtors (i)
29 adjust payroll tax deductions to prevent over withholding, (ii) amend Schedule I to reflect
30 the reduced withholding; (iii) submit to Trustee two consecutive paystubs to verify said
31 reduction; and (iv) increase the plan payments in the Stipulated Order Confirming.
- 32 i. If Debtors are in default (in any amount) on their first mortgage the plan must propose
33 mortgage conduit payments. If the plan does not propose a mortgage conduit, Trustee
34 objects to confirmation. This may be resolved by amending the plan or seeking an order
35 from the court excusing compliance with the conduit requirement. L.R.B.P. Rule 2084-4(b).

1 **Specific Requirements:**

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1. **Tax Refunds.** If Debtor receives a tax refund in excess of \$1,000 during the pendency of this case, said refund must be turned over to Trustee. The proposed stipulated order on confirmation needs to specifically provide that such refund is a SUPPLEMENTAL payment under the plan.
 2. **The Order Confirming Plan Must Contain the Following Language Related to Treatment of General Unsecured Claims:** "General Unsecured Claims. Such claims shall be paid pro rata the balance of payments under the Plan and any unsecured debt balance remaining unpaid at the end of the Plan may be discharged as provided in 11 U.S.C. § 1328(a)."
 3. **Filed Proofs of Claim.** To date Trustee has noted that the following Creditors have filed proofs of claim that differ from the treatment proposed in the Chapter 13 Plan. **Trustee objects to the treatment of these proofs of claim. This objection may be resolved by amending the secured/priority treatment to match the proofs of claim in the Stipulated Order Confirming the Plan or by filing an objection followed by an order:** THE OASIS AT MAGIC RANCH HOA and US BANK. This objection extends to proofs of claim, if any, filed after the date of this evaluation/objection which seek treatment different from that provided for in the proposed Chapter 13 Plan.
 4. **Student Loans.** The Trustee notes that there are student loans in this case. The Trustee encourages counsel to have the debtor run a free Financial Aid Review at www.studentaid.gov to ascertain the exact amount of all student loans, the servicers, and the status of payments.
 5. **THE OASIS AT MAGIC RANCH HOA Amended Proof of Claim 3.** Trustee objects to confirmation because Creditor has filed a secured proof of claim in the amount of \$1,290.20 for Debtor's HOA and Debtor's plan proposes to pay \$740.70. This objection may be resolved by addressing the proof of claim balance and the amounts filed by Creditor and have order confirming match the claim balance or file an objection to the proof of claim followed by an order.
 6. **Debtor's Objection to Proof of Claim 4.** Trustee objects to confirmation as an objection to proof of claim 4 filed on May 1, 2020 will need to be completed. This objection may be resolved by either filing the order for the objection or withdrawing the objection.

- 1 7. **US BANK Proof of Claim** **11.** Trustee objects to confirmation as the creditor has
2 filed a secured proof of claim in the amount of \$2,589.69 in home arrearages on
3 Debtor's 1st mortgage and Debtor's plan proposes to pay \$0.00 in home arrearages.
4 This objection may be resolved by addressing the proof of claim and the amounts
5 filed by creditor and have the order confirming match the claim or file an objection
6 to the proof of claim followed by an order.
7
8 8. **Notice of Post-Petition Mortgage Fees**. Trustee objects to confirmation because
9 there is a post-petition mortgage fee claim filed by Creditor US BANK which has
10 not been included in Debtor's plan. This objection may be resolved by either
11 including the fee in the plan or by filing a motion to determine whether payment
12 of the claimed fee is required to cure a default or maintain payments in accordance
13 with 11USC 1322(b)(5).
14
15 9. **Unfiled Proofs of Claim**. To date the following creditors listed in the Plan have not filed
16 proofs of claims: **NONE**. Trustee reserves the right to supplement or amend this
17 paragraph.
18
19 10. **Plan Payments**. Debtor has made payments in the total amount of \$9702.08. Debtor is
20 delinquent in the amount of \$1596.32 through January 21. Trustee will not stipulate to
21 confirmation unless the plan payments are current. Plan payment information may be
22 obtained by logging on to www.ndc.org. In general, the information on this website is
23 24-hours old. **Trustee advises plan payment start date is not listed. The bankruptcy
24 was filed on the December 5, 2019 and payment start date has been set for January
25 5, 2020.**
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28 11. **Plan Payments for Debtor's Amended Plan**. Trustee objects to confirmation
29 because the plan payment schedule does not reflect the payments that have already
30 been made to date. This objection may be resolved by amending the plan payments
31 so that the plan payment schedule reflects the actual payments already made to
32 Trustee as of the date of the amended plan.
33
34 12. **Plan Summary Section (i)**. Trustee objects to confirmation as Debtor's plan
35 summary section (i) states the amount going to Debtor's ongoing mortgage is
36 \$45,759.55; however, Trustee shows that an amount of \$43,796.55 is the total
37 amount to be paid in ongoing mortgage payments. This objection may be resolved
38 by Debtor's Attorney increasing Debtor's plan funding to include the \$43,796.55
39 in ongoing mortgage payments.

- 1 13. **Conduit Payment Schedule Details.** Trustee objects to confirmation because the
2 plan does not state the number of conduit payments to be paid through the plan.
3 This objection may be resolved by including the following varying provision with
4 the appropriate information included: “*The conduit shall be paid by Trustee
through the plan beginning in month <> of the plan for the mortgage
payment due to creditor on <>. The conduit shall be paid through the plan for
a total of <> monthly mortgage payments. For any month where
the balance on hand in Debtor’s account is insufficient to allow disbursement of the
conduit payment and adequate protection payments that have come due, the amount
due for that month will be paid to creditor on the next regular disbursement date when
Debtor’s account balance has sufficient funds.*”
- 5 14. **Documents Requested by Trustee.** Any documents that have been requested will need
6 to be provided within 30 days. Such documents should be sent to Trustee with a cover
7 letter outlining and describing the documents. **Any documentation submitted must be
legible, organized by category and month, totaled and averaged (i.e. “show your
work”).** If Debtors fail to follow this guideline, Trustee will not consider any
8 information as being received and a Dismissal Order may be lodged for failure to
9 comply. Debtor is also required to submit a written explanation justifying the
10 reasonable NECESSITY of the excessive expenses.
- 11 15. **Adequate Protection Payments.** Trustee objects to confirmation because the
12 requirements of Local Rule 2084-6 (<http://www.azb.uscourts.gov/rule-2084-6>)
13 have not been met. Currently, Trustee is unable to disburse adequate protection
14 payments to FLAGSHIP CREDIT ACCEPTANCE in the amount of \$200.00 as
15 listed in the Chapter 13 Plan. Adequate protection payments may not commence
16 until a proof of claim has been filed and written request to commence payments
17 has been received from either Debtor or the creditor
18 (<http://www.dcktrustee.com/forms.html> see AP commencement notice). This
19 objection may be resolved by ensuring that a proof of claim has been entered on
the claims registry and notice to commence adequate protection payments has been
filed on the docket.
- 20 16. **Liquidation Analysis:** At this time Trustee believes that the plan **does** satisfy the
liquidation analysis requirements. Trustee reserves the right to amend this conclusion.
- 21 17. **Projected Disposable Income:** At this time Trustee believes that the plan **does not**
satisfy the projected disposable income requirement of Sec 1325(b). Trustee
reserves the right to amend this conclusion.
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- 1 **18. Plan Feasibility.** The Chapter 13 plan is not feasible as currently proposed. There
2 is a shortfall in funding in the approximate amount of \$40,193.40 including
3 Trustee's 10%. This shortfall amount assumes payment of all projected disposable
4 income under the plan. According to Debtor's Form 122C-2, the disposable income
5 of \$543.82, multiplied by 60 months, results in a dividend to unsecured creditors
6 of \$32,629.20. This calculation does not address additional funding shortfalls that
7 will arise in the event that the debtor misses a plan payment or is late in making
8 plan payments. The plan should be modified to provide sufficient cushion to
9 address reasonably foreseeable events. Trustee reserves the right to file an
10 amended evaluation requiring adjustments to the terms of the plan, including an
11 increase in plan funding if necessary, in order to address all timely filed proofs of
12 claim once the claims bar date has passed in this case.
13
- 14 **19. Objections to Confirmation.** Debtor shall resolve plan objections by submitting a
15 proposed SOC to Trustee or by setting a hearing on the objection within 30 days
16 of this objection/evaluation. If Debtor wishes to confirm by stipulation, the
17 stipulation of the objecting creditor must be obtained in writing prior to
18 submitting a proposed SOC to Trustee. If the resolution of the objection requires
19 changes which have an adverse impact on any other creditor under the plan
20 (including a reduction in the amount to any creditor and/or a delay in payment),
21 the changes must be noticed to creditors and an opportunity for objection
22 provided. To date Trustee has noted that the following creditors have filed
23 objections to the Chapter 13 Plan: THE OASIS AT MAGIC RANCH
24 HOMEOWNERS ASSOCIATION and US BANK.
25
- 26 **20. Submission of Proposed SOC.** If Debtors propose to confirm the plan through a
27 stipulated order on confirmation, a Notice of Submitting Proposed SOC should be filed
28 with the Court, including a complete copy of the Proposed SOC as an exhibit. The
29 Notice, SOC, and filing receipt may then be transmitted to Trustee via electronic mail
30 (mail@dcktrustee.com) or first class mail. Trustee will not review a proposed SOC if
31 it does not appear on the court's docket.¹ Trustee considers the time for reviewing a
32 proposed Order pursuant to LRBp Rule 2084-13(e), to begin running when all
33 Recommendation conditions are met.

34 RESPECTFULLY SUBMITTED this 4th day of February 2021.

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¹ The alternative to stipulated confirmation is setting a contested confirmation hearing before the
36 judge.

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5

6 By /s/  ASB# 011628
7 Craig Morris
8 Staff Attorney for the Chapter 13 Trustee
9

10 A copy of the foregoing was filed with the
11 court and a copy was transmitted via
12 electronic or first class
13 mail this 2/4/2021 to:

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